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August 29, 2007

Via Federal Express and Facsimile

Protected Resources Division
National Marine Fisheries Service
1201 N.E. Lloyd Blvd., Suite 1100
Portland, OR 97232-1274

**Re: Comments on the Lower Willamette Group's August 6, 2007
Permit Application Under the Endangered Species Act**

Dear Sir or Madam:

On behalf of Schnitzer Steel Industries, Inc. ("Schnitzer"), I write to comment on the August 6, 2007 Permit Application under Section 10(a)(1)(A) of the Endangered Species Act of 1973 ("Act") submitted by the Lower Willamette Group ("LWG") related to the project entitled Collection of Fish for the Portland Harbor Remedial Investigation & Feasibility Study, Round 3- Data Gaps, Superfund Project ("Permit Application"). As discussed below, the Permit Application does not meet the criteria under the Act. Schnitzer therefore opposes the Permit Application and requests that it be denied.

The LWG has submitted a collection permit application for scientific purposes under the Endangered Species Act of 1973, Section 10(a)(1)(A). In the Permit Application, noticed as permit number 10021 in the Federal Register Volume 72, Number 150, the LWG proposes to engage in boat electrofishing to target the following species: smallmouth bass, carp, sculpin, and crayfish within the Lower Willamette River. While listed species are not directly a target of this project, the Permit Application states that "it is possible that listed anadromous salmonids will be encountered" and that "the potential exists for some harassment, injury or mortality that would constitute a 'take' under the [Act]." Permit Application, Part F, Subpart 5.0.

Such permits for scientific purposes under Section 10(a)(1) of the Act can be issued only where the agency makes certain findings as required by the Act and regulations promulgated thereunder. Among other factors, the agency must consider whether the permit "would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species." 50 C.F.R. § 222.308(c)(4). Applicants are therefore required to identify the purpose of the taking and provide a detailed justification of the need for the taking, including a discussion of possible alternatives. 50 C.F.R. § 222.308(b)(4)(i). In assessing compliance with these criteria, the agency must ensure that it holds true to the underlying purposes and policy set forth at Section 2 of the Act, 16 U.S.C. § 1531, which declares that federal agencies must "seek to conserve endangered species." 50 C.F.R. § 222.308(c)(3).

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The Permit Application fails under these criteria. The LWG states that the purpose of the project is to "fill data gaps" for certain aspects of an ongoing Remedial Investigation/Feasibility Study ("RI/FS") at the Portland Harbor Superfund Site. The LWG notes that this work was requested by EPA. In fact, neither the LWG nor EPA has any legitimate basis for asserting that the taking is necessary or justified, nor are there grounds for concluding that the proposed taking would further any bona fide scientific purpose.

In their ongoing RI/FS work at the Portland Harbor Superfund Site, the LWG has already collected extensive tissue data. In February 2007, the LWG submitted to EPA the "Portland Harbor RI/FS Comprehensive Round 2 Site Characterization Summary and Data Gaps Analysis Report" ("Round 2 Report") summarizing the Portland Harbor site data collected to date. This Round 2 Report includes an evaluation of the data to date, and identifies additional data needed to complete the Portland Harbor RI/FS. While the Round 2 Report identifies various data gaps, additional tissue samples are not among them. Rather, after evaluating the data to date, the Round 2 Report concludes that no further tissue samples are necessary to complete the RI/FS.

The LWG's assertion in its Permit Application that the proposed taking is necessary to fill "data gaps" therefore conflicts with the LWG's own technical assessment as summarized in the Round 2 Report. While the LWG states that its Permit Application was prompted by a request from EPA, any such request for further information is, at best, premature. To date, EPA has not commented on the Round 2 Report, nor has it completed its evaluation of the data, findings or conclusions presented. Such a request for additional information therefore conflicts with EPA's own data quality objectives ("DQO") planning process guidance, which requires identification of clear objectives based on a defensible assessment of existing data. As stated in the DQO planning guidance, this approach "helps focus studies by encouraging data users to clarify vague objectives and document clearly how scientific theory motivating this project is applicable to the intended use of the data." In deviating from this guidance at the Portland Harbor Superfund Site, EPA is failing to achieve the stated goals of efficiency in the collection of data needed to achieve the project's objectives. In the absence of a coherent process for data collection at the Portland Harbor Superfund Site, neither the LWG nor EPA can defensibly assert that the taking proposed in the permit is justified and necessary.

Moreover, while the Permit Application discusses alternate methods of collecting the tissue, it fails to address alternate methods of completing the RI/FS without the additional tissue samples. An assessment of other options is important here particularly given the LWG's own conclusion as described in the Round 2 Report that such samples are not necessary to complete the RI/FS.

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For the foregoing reasons, Schnitzer requests that the Permit Application be denied.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Dragna', written over the printed name.

James J. Dragna